DOCUMENT RESUME

ED 269 851 EA 018 387

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TITLE Religion, Politics and Catholic Schools.
PUB DATE 31 Mar 86
NOTE 17p.; Paper presented at the Annual Meeting of the National Catholic Educational Association (Anaheim, CA, March 31-April 3, 1986).
PUB TYPE Viewpoints (120) -- Speeches/Conference Papers (150)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Catholic Schools; *Church Role; Civil Liberties; Court Litigation; Moral Issues; *Politics; *Public Policy; Religion; Social Action; Social Problems; *State Church Separation

ABSTRACT

Political and social issues have moral dimensions that make them proper subjects for consideration from a religious perspective. The separation of church and state is not intended to prevent religions, religious leaders, or religious beliefs from playing a role in the development of public policy, but instead to prevent favoritism or discrimination among religions on the part of the state. Relating religion and politics productively depends on several factors: religious institutions must recognize their unique missions as moral authorities; governments must accept the democratic and pluralistic basis of their authority, including the religious element; and society in general must understand that public policy does involve moral issues that must be addressed. Considering their privileged tax status, churches must be prudent in their political involvement, focusing on issues and transcendent values rather than on the merits of specific parties, candidates, or measures. Court decisions interpreting the separation of church and state in cases involving parochial schools or religious education have sometimes recognized that public support for private education can enhance the public's free exercise of religion, but other recent decisions have effectively impaired religious freedom in an overemphasized effort to avoid possible government entanglement in religion. (PGD)

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RELIGION, POLITICS AND CATHOLIC SCHOOLS

NATIONAL CATHOLIC EDUCATION ASSOCIATION

CONVENTION

ANAHEIM, CALIFORNIA

MARCH 31, 1986

JOHN E. POLLARD

EDUCATIONAL SERVICES DEPARTMENT

ARCHDIOCESE OF CHICAGO

EA 018 387

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First, let me express my gratitude to the Chief Administrators' Department for its kind invitation to present this paper on Religion, Politics and Catholic Schools. I would like to commend the National Catholic Education Association for bringing this important combination of issues to the attention of so distinguished a group of speakers and participants.

I have been asked to address the relationship of religion and politics with specific reference to Catholic schools. I want you to understand clearly at the outset of the presentation that I do not come before you as either a constitutional law or public policy expert. Until recently I was the director of DePaul University's Center for Church/State Studies. Presently I serve in the Education Office of the Chicago Archdiocese.

The bishops of the United States of late have been leading the Church toward a more vocal--some say prophetic--role in American Society. Consequently we Catholic educators are challenged to prepare ourselves and our students for life in a public church, a church in which dramatic statements on racism, economic justice, war and peace, are the guiding forces.

I intend to address four major areas in this presentation; first, religion and the political order; second, the relationship between religion and politics; third, the limitations of the religious voice in politics; and fourth, politics and the Catholic schools.

I. RELIGION AND THE POLITICAL ORDER

The social and economic problems facing the national community have important moral and religious dimensions. The equitable distribution of the earth's resources, arms control, human rights, education, energy, food and agricultural policies, health, housing, scientific research, technological

applications, and foreign policy initiatives all have moral dimensions to them and those dimensions should be taken into consideration as our government develops policy responses to them. Broad participation in the resolution of such complex problems does not guarantee their proper solutions, but without such participation, effective solutions would never be reached at all. Inclusion of religious perspectives in the discussion of public policy formation affirms that religious values are not limited to private concerns, but do indeed affect public concerns as well. Public policy development is not merely a secular endeavor, but also a religious one. Public policy seeks to direct the resources of a people toward the welfare of the human person and the achievement of the common good. In that sense, public policy reflects a profound moral vision. The American Constitution itself expresses a deeply moral vision when it upholds respect for life, freedom and justice. Its guarantee of freedom of religious expression provides for the direct inclusion of the religious voice in the process of public policy formation. Pope John Paul II says:

> An important challenge for the Christian is that of political life. In the state, citizens have a right and duty to share in the political life. For a nation can ensure the common good of all and the dreams and aspirations of its different members only to the extent that all citizens in full liberty and with complete responsibility make their contributions willingly and selflessly for the good of all.

In a pluralistic and democratic society, all citizens are free to join the public policy discussion, not just the ones who have filtered out their religious values. It must be quickly noted that, in the free marketplace of ideas, individuals or groups will have to earn whatever influence they may gain by the clarity and cogency of their arguments. Concern for social justice and the dignity of the human person requires both individuals and groups to become active participants in the political process, because injustice and human rights violations are often systemic and can only be reversed through governmental action.

The political order is enriched by active, informed, and responsible participants. Each individual is therefore called upon to reflect on the issues that confront society and to critique those issues as well as their practical, political implications, while taking into careful consideration their moral dimension. The religious perspective of a societal problem, helps form the proper context within which society can make responsible public policy decisions.

Religious leaders (and here I would include Superintendents, Vicars, Diocesan Office Personnel and Principals) have a particularly difficult role to play in the political order. Because they are teachers, they are expected by their followers to provide guidance on a wide range of issues. Often they are looked to for official positions on issues, the criteria by which those official positions are determined, and norms for the formation of personal consciences. From time to time religious leaders are accused alternately of providing too much leadership or not enough leadership. They are also often reminded that they should limit their pronouncements to religious matters and leave politics to the experts. Religious commitment, some assert, does not

confer expertise in politics or lawmaking.

In an address made on behalf of the DePaul University Center for Church/State Studies at the annual meeting of the American Bar Association, Joseph Cardinal Bernardin shed some considerable light on this problem of credibility.

> One of the problems that religious leaders have to face continually is the question of credibility. Some people ignore what we say simply because they perceive us as operating outside our own area of expertise when we make statements regarding public policy. I am not arguing that we have the definitive answers to complex questions or that we have the same kind of competence as foreign policy experts. We do bring a dimension to the discussion that is proper to our competence, however. We merely ask that people evaluate our arguments on their merits.

Churches, too have a distinct role in the political order. The Second Vatican Council's document, "The Church in the Modern World," states:

> By preaching the truth of the Gospel and shedding light on all areas of human activity through her teaching and the example of the faithful, she [the Church] shows respect for the political freedom and responsibility of citizens and fosters these values... She also has the right to pass moral judgments, even on matters touching the political order, whenever basic personal rights or the salvation of souls makes such judgments necessary.

For the most part, the various churches assist the public policy discussion through educational programs aimed at their own adherents which analyze the issues for their moral dimensions, measure public policy against religious values, enter the public policy debate with other concerned groups, and speak out boldly and responsibly on social issues. In this regard, religious groups affirm their traditional convictions that moral values relate to public policy proposals and not merely to personal considerations.

The proper place of religion in the political order is well secured by both the constitutional principle of freedom of expression and the theological principle of social justice. Religion does not seek to replace government. Neither should government seek to inhibit religion. As John Courtney Murray so often reminded us, "while the church is separate from the state, the Church can never be separate from society."

II. THE PROPER RELATIONSHIP OF RELIGION AND POLITICS

In my view, over the past several decades a certain erroneous assumption seemed to be made by many thoughout the country that the separation of church and state meant that values rooted in religious beliefs should be excluded from the public debate on social issues. Contributions that could be made by people committed to religious values were often viewed as at least bothersome and at times threatening. Our discussion on the major social issues that this nation faces, like nuclear war, human rights, abortion, economic justice, civil rights, genetic research, and care for the dying, demands the inclusion of the moral perspective if it is to be honestly advanced. Since the founders of the American republic intended to establish a profoundly moral enterprise, religion has had an important influence on the political life of this nation from the very beginning. The separation of church and state is, therefore, a good place to begin the discussion of religion and politics, not to end it.

J. Brian Hehir, Senior Research Scholar at Georgetown's Kennedy Institute of Ethics, has said that the religion clauses of the First Amendment mean that

> religious institutions should expect neither favoritism nor discrimination. [Their] purpose is not to silence the religious voice or deny a public role for it. Separation essentially guarantees the freedom for religious institutions to earn their

way into the policy debate by demonstrating the wisdom of their teaching.

The question, then, is not whether religion and politics are related, but how they can be related in a productive way.

First, religious institutions must have a clear sense of their unique mission as distinct from the mission of the state. Religious institutions need to protect their independence from the state and at the same time recognize the legitimate autonomy of government. This mission of the religious institution is to assess public policy from the moral perspective. In this sense, the distinct kind of influence that religious institutions offer is moral in nature. The moral influence is directed properly at the institutions of a civil society: social service institutions, fiscal institutions, economic institutions, educational institutions, health care institutions, environmental institutions, foreign policy institutions, military institutions, and legal institutions, to name a few. The moral authority that religious institutions offer and the degree to which that moral authority is effective is directly dependent on the cogency and sensibility of their arguments. Religious motivation itself does not confer expertise in the face of complex questions of social policy or appropriate strategies for their resolution.

Second, governmental institutions must realize that their ligitimate authority to regulate a free society for the common good is conferred through a political process that is both democratic and pluralistic. Religious pluralism in a civil society means that profoundly divergent and at times radically incompatible views are not merely tolerated, but also protected. Freedom to believe as one chooses is essential and the great diversity of religious expression in America can be seen as a certain testament to that

freedom. But religious pluralism does not mean that secularism guides the civil discourse. Simply because there is not one, dominant, religious perspective shaping the public policy discussion does not mean that all religious perspectives are to be excluded. Religious pluralism means the co-existence of various and often conflicting religious viewpoints, not the absence of any. Religious pluralism does not water-down moral authority simply because that moral authority is diverse. While the task of building a consensus within the context of religious pluralism is quite difficult and challenging, to exclude the religious voice from the public policy debate and view public policy development as a purely secular endeavor is to abandon both our constitutional and religious heritage.

Within the context of religious pluralism, both politicians and religious leaders have important and sensitive roles to play. The politician has the responsibility to support and encourage the very diversity that both makes public policy development so complex and ensures a free and open dialogue of the issues. The religious leader has the corresponding responsibility to speak strongly within the public discussion without inflaming it. Because both political and religious leaders have strong feelings and convictions, restraint, civility, and mutual respect need to guide the tone of the debate. So often the content of the debate is obscured by the way it is conducted. At times more heat is thrown than light.

Third, American society as a whole must recognize the moral implications of its public policy positions and proposals. In a pluralistic society, a public consensus is indeed difficult to develop. Tolerance of opposing viewpoints can bring about a certain moral vacuum as well. Some might think because everyone has the right to his own opinion, no one's opinion could be

better than anyone else's. But John Courtney Murray in We Hold These Truths reminds us that society stands in need of a public consensus which furnishes "the premises of the people's action in history and defines the larger aims which that action seeks in internal affairs and external relations." While no church ought to insist that its morality be legislated for everyone, the religious values of one church can be the basis from which a broad moral consensus may be built and perhaps eventually enacted into law. Forming the conscience of a nation, or perhaps a simple majority of a nation, involves the moral assessment of complex social questions. This is quite properly the public role of religion. Honest disagreement over moral analysis and policy proposals exist among good and intelligent people, but the complexity of the process should not paralyze the participants. To be careful, tolerant, wary, cautious, and restrained does not mean to be silent. Advocacy with respect to the important issues of our age is not merely the prerogative of those who seem to have achieved some level of certainty with respect to their resolutions. A national discussion of the major questions that face this generation is enriched by the inclusion of religious values. In Walz v. Tax Commission, the Supreme Court noted that

> [a]dherents of particular faiths and individual churches frequently take strong stands on public issues including...vigorous advocacy of legal and constitutional positions. Of course, churches as much as secular bodies and private citizens have that right.

The challenge lies in the ability to build agreement across a pluralistic and democratic society on even fundamental public policy positions.

III. LIMITATIONS ON THE RELIGIOUS VOICE IN POLITICS

Important considerations to turn to at this time are the limitations in law and in propriety that restrict the involvement of religion in political affairs. In view of their privileged tax status, churches must be prudent in their political involvement, especially in regard to demonstrating support or opposition to particular political candidates.

All citizens have a right and a responsibility to participate in the public life of the nation. This includes citizens who espouse religious values. It is important that citizens exercise this right with prudence in accord with the law. Churches and religious organizations can make appropriate efforts to assist their adherents in recognizing the importance of their involvement in the political process. They can urge their followers to educate themselves on the issues and the candidates as well as to participate in all elections. Because the primary responsibility of churches in the political arena is educational, the churches have an obligation to speak to the moral dimension of political issues demonstrating the moral implications of specific policy proposals. The churches can remind their members that the well-educated citizens's concern should extend to the broad spectrum of social issues and avoid a narrow emphasis on any single issue. While some concerns may have priority over others at a given time, citizens should be encouraged to inform themselves of a particular party's or candidate's stand on all the issues before making a final judgment. The church's role is to provide effective moral leadership for their adherents and to urge those adherents to apply those moral guidelines impartially to all parties and candidates.

On the other hand, churches must be cautious indeed about their political involvement so as to avoid losing their ability to attract tax deductible contributions. The Congress and the Internal Revenue Service have issued regulations that limit the political activity of churches, schools, and charitable institutions. Tax exemption is provided for organizations that do "not participate in or intervene in any political campaign on behalf of any candidate for public office, including the publishing or distributing of statements."

Case Summary

Abortion Rights Mobilization has filed suit against the National Conference of Catholic Bishops contending that their Pastoral Plan for Pro-Life Activities urges political activities that are forbidden by the restrictions placed on not-for-profit organizations in the federal income tax code. Abortion Rights Mobilization claims that the activities encouraged by the bishops exceed those permitted in the Internal Revenue Code. In light of such political activity, Abortion Rights Mobilization contends that the tax exempt status of the National Conference of Catholic Bishops should be revoked. Their suit seeks to prove that the political activity of the bishops which condemns abortion and advises legislators to vote against pro-choice measures is in violation of the not-for-profit section of the Internal Revenue Code.

The National Conference of Catholic Bishops and its public policy arm, the United States Catholic Conference, refused to comply with a subpoena for the records of its pro-life activities, finances and related material sought by the Abortion Rights Mobilization. Rather than turn over the documents, the bishops accepted a contempt-of-court citation.

In an address to the American Bar Association last August, Judge Arlin Adams said that "the mission of the religious leader is to remind us constantly of the existence and meaning of transcendent principles in our daily lives." While Judge Adams argued in his paper that religious leaders' involvement in political affairs should be limited and infrequent, I do not believe he was merely telling religious leaders in more polite language not to meddle in politics. The transcendent dimension of life which the religious voice has so successfully represented in the development of this nation uncovers a reality beyond the temporary present. When religious authority provotes particular political policies, it is possible that the institutional claim the religious voice has on the transcendent could be somehow weakened or at least perceived to be in tension with the claim it makes on the temporary present. Adams also says: "The religious leader cannot hold out a transcendent standard by which the state and its policies are to be judged if religious authority becomes narrowly political or too frequently invoked."

The singular contribution that religious leaders can make to the public policy discussion is related to their experience of the transcendent dimension of life. Religious leaders remind the society that there is more than merely political and expedient considerations to social issues. While this familiarity and identification with the transcendent dimension of life does not mean religious leaders have nothing to say about particular political issues, perhaps it does mean that their involvement needs to be careful, responsible, reasoned, and warranted. Religious leaders often stand where the transcendent and immanent meet and therefore are in a unique position to analyze the moral dimension of political issues. The impact of churches and schools may well be primarily on the spirit of the times rather than on narrow political concerns. Preaching and teaching within the context of a religious tradition help define the wider concerns of the times and are ordered toward uncovering the ultimate meaning of momentary political considerations. After all, the political vocation of a religious leader emerges from a profoundly theological commitment, not vice versa.

IV. POLITICS AND CATHOLIC SCHOOLS

The Catholic education of children has often been the point at which the Constitutional prohibition against the establishment of a state religion and the Constitutional protection of the free exercise of religion have collided. Most of the problems that Catholic schools have encountered from the various legislative and judicial regulatory agencies have come in the area of public aid to private education. The principle that has guided the applications most often can be characterized as "no aid to religion." As a matter of fact,

government has accommodated itself rightly to the religious needs of the people. Most notably in the payment of chaplains in the armed forces and the construction of chapels for use by the military, and also in the granting of tax exemptions to the properties of religious institutions. "No aid to religion," therefore, is not an absolute principle.

Governmental aid to religion is not unconstitutional when it represents a legitimate accommodation of the public service to the religious and spiritual needs of the people. Such accommodation supports the free exercise of religion and clearly avoids the establishment of a single religion. For example, in a case which directly involved government and Catholic schools, Everson v. the Board of Education, the Supreme Court sustained the right of a local government body to finance bus transportation for children attending parochial schools.

In the McCollum ruling of 1948, however, the Supreme Court prohibited religious instruction through a "released time" program within the public school building. The decision introduced the doctrine of the "absolute" separation of church and state invoking a line from Robert Frost, "good fences make good neighbors." I have considerable doubt that the Court not only failed to understand the ironic tone of the poem, but also the intent of the framers of the Constitution. The principle of the separation of church and state should not be regarded in any way as either hostility or indifference to any one religion or to religion in general. Protection of rights and interests, not dissolution of them or infringement upon them, is the intent of the First Amendment.

In Zorach v. Clausen, the Supreme Court permitted religious instruction through a "released time" program outside the public school building. In the

Board of Education v. Allen, it permitted the loan of secular textbooks to children attending parochial schools; and in Mueller v. Allen, the Court upheld the constitutionality of a tax deduction for parents of parochial school children. In these decisions, Catholic education has fared reasonably well. Not only has the freedom to choose Catholic educational facilities been fortified, but also public service has been accommodated to the religious needs of a large number of citizens.

Most recently, however, we have not fared so well in the Supreme Court. I do not need to rehearse the details in either the Grand Rapids or Felton cases here, but I would like to conclude this paper with a few comments on the Felton case.

It seems to me that all the discussants in this troublesome case would agree that the government should not assume the responsibility for the sacred order of religious life. This is not to say, however, that government has no responsibility in matters of religion. Governmental responsibility most certainly extends to a care for the freedom of religion. The right to the free exercise of religion is guaranteed by the same First Amendment which prohibits the establishment of a preferred religion in this nation. It would seem to be contrary to the American constitutional tradition to enforce so rigidly the absolute separation of church and state that the free exercise of religion would be unreasonably impaired. This is precisely what I see demonstrated in the Supreme Court's judgment in Felton. The Court's fear of the excessive entanglement of the government in the supervision of its own programs and personnel on parochial school premises has unduly and severely limited the religious freedom of the educationally disadvantaged children. In this judgment the constitutional principle of the separation of church and state

cloaks a hostility to religion which contradicts the fundamental intent of the First Amendment, namely, to protect the free exercise of religion in American society.

Another Supreme Court in another age declared that government "respects the religious nature of the people and accommodates the public service to their spiritual needs." This line of reasoning seems incompatible with that followed by the majority in Felton. Presently, the doctrine of no aid to religion is quite overdeveloped, while the doctrine of religious liberty is weakened. An important task before the American people is the discovery of criteria by which we can "determine where legitimate governmental support of religious freedom ends and where illegitimate governmental establishment of religion begins." While the Court's recent judgments weigh the balance heavily on the separationist side of the scale, I am confident that the broader American society has a great capacity for the harmonious and civil discussion that can move the question toward a just solution. The most tragic result of Felton, even more tragic than denying educationally disadvantaged children a chance for success, would be to conclude that the question itself was settled for all times.

Thank you for your kind attention.